

1906-006 Chancery Causes: S. B. F. Haburn vs. H. A. Sprinkle & Co.] &c
Lee Co.

Sprinkle, Pennington, King, Haynes

CA-Contract Disputes
T-Property

To the HON.H.A.W.SKEEN, Judge of the Circuit Court for Lee
County, Virginia:

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Humbly complaining, your orator, S.B.F. Haburn, would respectfully show unto the Court that he together with E.W. Pennington and Robert L. Pennington on the 26th day of November, 1904, entered into a certain contract with H.A. Sprinkle, John P. Sprinkle and Charles E. Sprinkle, partners under the firm name of H.A. Sprinkle and CO., wherein your orator and the said E.W. Pennington and Robert L. Pennington sold unto the said H.A. Sprinkle and Co., all the merchantable timber on the lands known as the S.B.F. Haburn lands, and being the same lands conveyed to your orator by Manassa A. Jones, and which said lands are situated in Lee County on the South side of Cane Creek and south of the lands formerly owned by Joseph Ely, for the sum of \$1900.00; all of which will more fully appear by reference to said contract herewith filed, marked Contract, and which is prayed to be read and treated as a part hereof.

It will be seen by inspection of said contract that the said H.A. Sprinkle and Co., should have a reasonable time within which to remove all the timber situated on the North side Chesnut Ridge of about fifty acres of said tract of land, and for the remainder of said timber they should have eight years.

Also that said H.A. Sprinkle and Company should have the right to use such small timber as may be necessary for loading, building roads or lumber camps.

Your orator further represents that the said H.A. Sprinkle and Company have now cut and removed all the merchantable timber from said lands as were contemplated by said contract, and that said H.A. Sprinkle and CO., have had a reasonable time in which to remove all the timber from the North side of Chestnut ridge on the fifty acres specified in said contract.

Your orator is advised, and so contends, that the contract applies to only such timber as would make merchantable limber, cross ties

or staves, while said H.L. Sprinkle and Co., contend that the words "merchantable timber" includes any kind of a tree^{or} bush or shrub that can be sold, and under their interpretation of said contract they are cutting down and destroying every kind of bush or tree * that will make a fence post, a stick of extract wood or a telephone pole. Your orator has notified them to stop destroying his smaller timber, and to stop cutting any thing further on said fifty acres of land on the north side of Chesnut ridge, but they declare they will cut any thing they please on said lands until they are stopped by an order of court.

H.A.

Now your orator alleges that said H.A. Sprinkle and Co. have cut from said lands every kind of timber that they were entitled to have under the provisions of said contract, and that they are doing your orator an irreparable injury by cutting the small trees, posts and poles on said land; and that said H.A. Sprinkle and Co. are insolvent or practically so; so that judgment against them for a trespass would be unavailing, if recovered.

The said E.W. Pennington and Robert L. Pennington have no interest in said timber further, and cannot be affected by any decree in this cause.

Your orator being therefore remediless save in a court of equity, his prayer therefore is that said H.A. Sprinkle, John P. Sprinkle and Charles E. Sprinkle partners doing business under the firm name of H.A. Sprinkle and Co., as well as E.W. Pennington and Robert L. Pennington be made parties defendant to this bill and be required to answer the same but not on oath, that being waived; and that proper process issue, and that the said H.A. Sprinkle, John P. Sprinkle and Charles E. Sprinkle be enjoined and inhibited from cutting any kind of timber on said lands of your orator except such as will ~~mak~~ make merchantable lumber, cross-ties and staves, and that they also be enjoined and inhibited from cutting any timber of any kind from your orators said lands on the north side of Chestnut Ridge; that said contract be construed; that damages be awarded your orator for the small trees poles and posts already cut by said H.A. Sprinkle and

Co. on you orators said lands and that all such other further and general relief be granted your orator as may be just and right in the premises. And he will ever pray, etc.

Orre Y Noel P.Q.

~~J. J. Kearney & Co.~~

~~An injunction is being granted by the S.D.
J. H. [unclear], plaintiff against J. A. Sprin-
gill, John P. Sprinkle and Chas
J. Sprinkle ~~and~~ defendants re-
straining them from cutting the
timber mentioned in the bill
But this ~~bill~~ order is not to
be effective until the plaintiff
or some one for him execute before
the Clerk of Lee County Circuit
Court a bond in the sum of~~

S. B. F. Nabors

20 { Bill in charge

H. A. Sprinkler & Co.

Virginia, Lee County to-wit:

I, J.J. Yeary a justice of the peace in and for the county and state aforesaid do certify that S.E.F. Habourn this day personally appeared before me in my county aforesaid and made oath that the allegations in the foregoing bill so far as made from his own knowledge are true and so far as made from information from others he believes to be true.

Given under my hand this 17 day of July, 1906.

J. J. Yeary J.P.

Hoban
re Bill
A.A. Sprinkle & Co

paid Sept 3,
1906.
H. C. W. Stuen
Lester

To the Hon.H.A.W.Skeen,Judge of the Circuit Court for Lee County:

The answer of H.A.Sprinkle,John P.Sprinkle and Charles E. Sprinkle,partners doing business under the firm name of H.A. Sprinkle & Company,to a bill proposed to be exhibited against them and others in this honorable court,by S.B.F.Habern,and to the application of the said Habana for an injunction,etc.

Respondents say that it is true that they on the 26th day of November,1904,purchased from the said Habana,R.L.Pennington and E.W.Pennington all the MERCHANTABLE TIMBER on the lands known as the S.B.F.Habern lands on the south side of Cane creek and south of the land formerly owned by Joseph Ely now deceased, all of which will more fully appear from said contract,which is filed herewith as a part hereof marked "A".

It is further true that the respondents were to have eight years from the date of the said contract to remove said timbers from said land,except the timber from about 50 acres of said land lying on the north side of the Chestnut ridge. And on this 50 acres they were to have a reasonable time in which to remove the timber therefrom.

It is not true that the respondents have now cut and removed all the timber from said land ~~contemplated~~ ^{contemplated} by said contract,but on the contrary up to this time they have cut and removed only about fifty or sixty per cent of the timber so purchased as aforesaid.

Respondents aver that the timber purchased by them was all the timber on said tract of land having a marketable value, that is,all such timber whether large or small that they could in any way sell or convert into money,including not only such timber as could be used for making lumber,cross-ties,and staves but all timber that could be used for extract wood,telgraph and telephone poles,fencing posts and tanbark;and that all these things were fully discussed during the negotiations which resulted ⁱⁿ the making of said contract. These negotiations,

were of considerable duration. Your respondents first attempted to purchase from Habern and Penningtons only merchantable logs, in accordance with the rules of inspection of the American Hardwood Association, but they refused to sell in this way, and positively declined to make any contract of the sale of the said timber, that did not embrace every thing that could be used on the market, or sold for any purpose; and respondents further aver that when said contract was being drawn up by R.L. Pennington, one of the grantors, the meaning of the words "merchantable timber" were discussed and Mr. Pennington declared that it meant and embraced all kinds of timber that had a marketable value, or could be sold; and Mr. Habern agreed thereto, so understood said contract and frequently thereafter so told his neighbors, ~~xxx~~ as well as these ^{men} defendants.

Respondents aver that the timber on said land that could be used on said land for staves, lumber and ~~xxxxxx~~ cross-ties was not worth in any market, to which they could have delivered ^{them}, more than \$1000.00, and they would not have bought it at one cent over that sum, and they never would have made said contract but for the fact that the grantors sold them all the timbers that could be used or sold for any purpose on the market, such as tan-bark, telegraph ^a and telephone poles, extract wood, fencing posts, lumber, etc.

It is not true that respondent has had a reasonable time in which to remove the timber from the fifty acres on the north side of chestnut ridge. There is about 90 to 100 acres of the Habern ~~la~~ land on the north side of said ridge; the said Habern has never particularly designated the fifty acres from which he wanted the timber first removed; respondents understood that Mr. Habern wanted to clear up for cultivation some of the land on the north side of said ridge and for that purpose, he wanted a shorter time allowed for removing the timber therefrom, but the time taken to remove the said timber has in no way interfered with the use of the said land by the said Habern. In fact, respondents have allowed him to clear and use such parts of it, as he has desired to use. Respondents

will further show unto your honor that after said contract was entered into, to-wit on the 25th day of February, 1905, the said Habern gave his consent that respondents might work the timber on the Flat Woods set first. This took something over six months and during that time nothing was done or could be done by respondents on the north side of the ridge. There was quite a large amount of timber on the north side of the ridge and a great deal of it had to be moved quite a distance to sets that could be at all used, and in addition thereto respondents were delayed quite a while on account of a side track which was necessary and its necessity well known to the said Habern, in order to profitably market said timber; and respondents aver that they have not had a reasonable time in which to remove said timber from said 50 acres of land, even if Mr. Habern had ever pointed out to them the particular 50 acres of land from which he wanted said timber removed. But if they had been let alone by the said Habern, they would have gotten the timber from the north side of the ridge this Fall, in all probability, and if hereafter let alone they will get it off this Fall and during next Spring and Summer. At the time Respondents made said purchase situated as they were, and there situations was fully known to the said Habern, and said contract was made with reference to their situation, they believed it would take four years to remove said timber from the north side of said ridge, and they would not under any consideration have made said contract if they had been limited to any time less than three years for removing the timber from the north side of said ridge; and they aver that less than three years would not have been a reasonable time for said work.

And now having answered and praying your honor to consider as a part of said answer, the affidavits filed herewith, they pray that said injunction be refused, and that they be let alone with their work and their rights under said contract. And they will ever pray, etc.

H. A. Sprinkle & Co by
W. L. Duncan Att'y

Virginia,

Lee County, to-wit:

I, J. J. Yeary, a justice of the peace in and for the county and State aforesaid, do hereby certify that H. A. Sprinkle and Charles E. Sprinkle, personally appeared before me in my county aforesaid, and made oath that the facts, circumstances and allegations set out on the foregoing answer are true in so far as made upon their own information and in so far as made upon the information of others they believe them to be true.

Given under my hand this the 3rd day of Sept., 1906.

J. J. Yeary J.P.

Mr. [unclear]
[unclear] [unclear]

H. A. Spradley 1890

Fulcrum Sept 5

1705

New Stone
- [unclear]

S. B. F. Haburn, Plaintiff.

vs.

Order

H. A. Sprunkle & Co. Defendants.

On motion of the plaintiff for an injunction to which motion the defendant appeared, and the cause came on to be heard on the 4th day of September, 1906, at Big Stone Gap, Virginia, in vacation of Lee County Circuit Court, upon the plaintiff's bill, the answer of the defendants, sworn to by them, with general application thereto, affidavits filed on behalf of the defendants, the plaintiff's objection to R. L. Pennington's affidavit because it contradicts the written agreement of the parties, so the plaintiff claims, oral evidence on behalf of the plaintiff by agreement of the parties by their attorneys, and was agreed by counsel, and the judge not being fully advised as to his judgment, takes further time to consider the same, and now this the 5th day of September, 1906, having carefully and fully considered the issue raised by the pleadings and their objections to the affidavit of R. L. Pennington it is, therefore, adjudged, ordered and decreed that the plaintiff

objection to the affidavit of
R. L. Pennington be and the same
is hereby overruled, and it is
further ~~ordered~~ adjudged &
ordered and decreed that
the injunction prayed for in
the bill be and the same
is hereby refused.

H. A. W. Siler

Judge

S. B. F. Adams

& { Lewis

H. A. Sprinkle & Co

I George W King do state, that I
am well acquainted with S. B. H. Haberm
and the Sprinkles boys composing the
firm of H. A. Sprinkle and company.

I was in the town of Pennington Gap
where a contract was entered into
by and between H. A. Sprinkle John
P Sprinkle & John E Sprinkle part-
ners under the firm name of H. A.
Sprinkle & Co of the one part and
S. B. H. Haberm & W. Pennington & R. L. Pen-
nington of the other part. Mr. Haberm
told me he had sold his timber, and
he asked me to look over the contract
as written, He told me he had sold
to the Sprinkle boys. I asked him what
he had sold. He told me he had sold
all his timber that is marketable, that
is all that could be sold, On looking
looking over the contract I remembered
it left him no rail timber, he said
he did not want any rail timber
that wire was cheaper. I asked him
why he gave as long a time as 8 years
he said this was to give plenty
of time to get off the wood fit for
extract wood. As I understood him
Mr. Haberm the Sprinkles were to
have all the timber of every kind

That They could use or sell, and in addition ~~to~~ the marketable timber they were to have any small timber not marketable that they desired to use for roads &c.

Mr Hoken in discussing the removal of the timber on the North side of Chestnut Ridge he said it ~~would~~ to be removed in a reasonable time and that he thought three years would be reasonable. In other words I understood ~~from~~ him that they were to have 3 years to remove said timber on the north side of the ridge.

G. W. King

Va Lee County Court

This day G. W. King whose name is signed to the foregoing writing personally appeared before me J. J. Geary a Justice of the said County and made oath that the facts stated therein are true as he really believes
Given under my hand this 3rd day of August 1906.

J. J. Geary J. P.

Hahn
vs Affidavit
H. A. Sprinkle

Gio W. King

Virginia, Lee County, to-wit:

In the Spring of 1905 I met up with S.B.F. Haburn on his land and near his dwelling house, and we were talking about timber and his sale to the Sprinkle boys. I pointed out to him a chestnut and told him that trees of that size made good telegraph poles. He remarked to me that he wanted the Sprinkle boys to take from his land everything that they could sell and get money for, that they had paid too much for the timber on his land. On other occasions I have heard him say that he wished they would take all the brush off, that the land would then be ready for him to plant in corn. In all these conversations I understood from him that he had sold all the timber on his land that could be used for any marketable purpose.

Given under my hand this the 1st day of September, 1906.

V. D. Haynes

Virginia, Lee County. to-wit:

This day V.D. Haynes personally appeared before me Geo. P. Cridlin, a Commissioner in Chancery for the Circuit Court of Lee County, Virginia, and made oath that the facts stated in the foregoing writing to which his name is subscribed are true.

Given under my hand this the 1st day of September, 1906.

Geo. P. Cridlin
Commissioner in Chancery.

Hakim
95 1/2 Affidavit
H A Sprinkle Geo

T. Davis Hayes

Final Sept 3

1915

H. A. W. S. W. S.
J. W. S.

